

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-554453
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Gilbert Leroy SNIDER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1701

Gilbert Leroy SNIDER

This appeal has been taken in accordance with Title 46 United States Code 239b hereinafter referred to merely as section 239b, and Title 46 Code of Federal Regulations 137.30-1.

By order dated 7 July 1967, an Examiner of the United States Coast Guard at San Francisco, Calif., revoked Appellant's seaman's documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that, while the holder of a duly issued Merchant Mariner's Document, Appellant was convicted of a violation of section 11500 of the Health and Safety Code of the State of California, a narcotic drug law, on or about 13 February 1959, in Superior Court for the County of Contra Costa, State of California.

At the hearing, Appellant was represented by professional counsel. Appellant constructively entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence a certified copy of Appellant's parole status report and a certified copy of a judgment, No. 6557, in the Superior Court for Contra Costa County, State of California, convicting Appellant of, among other things, possession of narcotics in contravention of the California statute described above.

Appellant offered no evidence in defense.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

The entire decision was served on 7 July 1967. Appeal was timely filed on 24 July 1967.

FINDINGS OF FACT

On 13 February 1959, Appellant was convicted in the Superior Court of Contra Costa County, State of California, a court of record, for having been in possession of narcotics in violation of section 11500 of the California Health and Safety Code.

Appellant's documents bear no special validation endorsement for emergency service, as provided for in sections 121.01 through 121.19 of Title 33 of the Code of Federal Regulations.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the use of Appellant's documents is so substantially limited by their validated, that revocation would serve no purpose; and that mandatory revocation of a person's documents, based merely on proof of a prior conviction for having violated a narcotics law, is inconsistent with the due process clause of the fifth amendment to the Constitution of the United States, in that no showing must be made that the prior conviction relates in any way to the legislative purpose of section 239b.

It is also contended that the exercise, by the Commandant, of the powers conferred by section 239b is unlawful, as there has been no proper delegation of these powers by the Secretary of the Department of Transportation. In support of the latter contention, it is argued that inasmuch as section 239a of Title 46 of the United States Code expressly defines "Secretary", when such a word is used in section 239b, as "the head of the department in which the Coast Guard is operating," the powers conferred by section 239b passed to the Secretary of the Department of Transportation by operation of law, rather than as an incident of the Department of Transportation Act; thus, that the delegation by the Secretary of the Department of Transportation to the Commandant of the Coast Guard, of those functions, powers, and duties, relating to the Coast Guard which were transferred from the Secretary of the Treasury to the Secretary of the Department of Transportation by the Department of Transportation Act, is insufficient to vest the powers conferred by section 239b, in the Commandant of the Coast Guard.

APPEARANCE: Brewster Q. Morgan, Esq., Legal Aid
 Society of San Francisco

OPINION

In my opinion the matters raised on appeal do not warrant vacation or modification of the order entered by the Examiner. Although Appellant's documents do not bear a special validation endorsement for emergency service, they are currently valid for

purposes of serving on vessels of less than 100 gross tons, or as a replacement or addition in the crew of a vessel at a foreign port, when persons, in possession of documents bearing a special validation endorsement, are not available. See 46 CFR 121.01(a) and 121.01(d) respectively. Thus, revocation of Appellant's documents would preclude him from serving in these capacities and the Coast Guard clearly has jurisdiction in this matter.

It is contended, in effect, that the Coast Guard must demonstrate that revocation under section 239b will serve, in some reasonable manner, to promote the safety of life and property at sea. However, section 239b makes revocation mandatory solely on the basis of proof of a conviction of a narcotics law violation. See Commandant's Appeal Decision No. 1362. Other factors are not material. See Commandant's Appeal Decision No. 1274. No determination of whether this deprives a person charged of his right to due process may be made here, as only the courts may pass on issues, the resolution of which may contradict the expressed will of Congress. See Commandant's Appeal Decision No. 1382.

The only other matter raised on appeal concerns the efficacy of the delegation of the powers conferred by section 239b from the Secretary of The Department of Transportation to the Commandant of the Coast Guard. As here pertinent, this delegation authorizes the Commandant to exercise the functions, powers, and duties vested in the Secretary of the Department of Transportation by section 6(b)(1) of the Department of Transportation Act, relating to, among other things, "safety of life and property at sea." 32 Fed. Reg. 5606. Section 6(b)(1) of the Department of Transportation Act, transfers the Coast Guard to the Department of Transportation and vests in the Secretary "all functions, powers, and duties relating to the Coast Guard of the Secretary of the Treasury." 49 U.S.C. 1655 (Supp. II 1966). Use of the word "all" without qualification, clearly indicates that section 239b powers intended to be included in the transfer. Even assuming that these powers were transferred by operation of law, as argued on appeal, their transfer by statute, though possibly redundant, would not therefore be precluded. It may well be that their transfer by statute was designed to obviate their specific delegation.

Inasmuch as the powers conferred by section 239b were transferred to the Secretary of the Department of Transportation by section 6(b)(1) of the Department of Transportation Act, their delegation to the Commandant of the Coast Guard, in terms of their being among the powers so transferred, was entirely proper.

I concluded that the Examiner's order should be affirmed.

ORDER

The order of the Examiner dated at San Francisco, Calif, on 7 July 1967, is AFFIRMED.

W. J. Smith
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this 16th day of April 1968.

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